(N. S.) 25. When, however, the power may only be exercised by will, the covenant to appoint cannot be said to be a defective execution, and will not be aided in equity. *Gaskins* v. *Finks,* 90 Va. 384, 19 S. E. 166. In *Learned* v. *Talmadge,* 26 Barb. 443, a conveyance was made by the donee of a power to one of the objects, and covenants were made that he would not make any disposition of the property by any will and that all of his interest was relinquished and extinguished. Nevertheless appointments subsequently made were held valid as against grantees of the covenantee. See also *Re Collard and Duckworth,* 16 Ont. Rep. 735. But the execution of a mortgage with full covenants of warranty by the donee was held to estop him from inconsistent dealings with the estate, and the appointees under the will had no further rights, in *Langley* v. *Conlan,* 212 Mass. 135, 98 N. E. 1064. Though an affirmative contract to appoint will not be specifically enforced, yet where the donee covenanted that he would not exercise his power so as to reduce the share which a particular beneficiary would receive on a default of appointment, it was held to be a release of the power to appoint, and the power thereafter could only be exercised subject to the fetter or limitation thus imposed by the negative covenant, and appointments made inconsistent therewith were set aside to such an extent as would satisfy the covenant. *Re Evered,* [1910] 2 Ch. 147. A release of a power can be made in England by virtue of statute, CONVEYANCING ACT, 1881, §52. A power in gross might be released, but the court refused to consent to the proposition that the donee could by virtue of a "gainful agreement" bind himself to refrain from the exercise of a power, *Thomson's Executor* v. *Norris,* 20 N. J. Eq. 489, 528. The court in the principal case did not decide whether the contract was enforceable against the estate of the decedent, or void in toto.

SALES—DAMAGES FOR BREACH OF WARRANTY OF SEEDS.—Defendant sold plaintiff melon seeds and expressly guaranteed them to be of a particular variety known as "Klekley Sweets." An examination of the seeds would not have disclosed whether they were of this brand or not. Plaintiff prepared soil and planted the seeds, which produced melons of a different and inferior variety; and plaintiff sued defendant for breach of warranty. *Held,* that the measure of recoverable damages was the value of a crop such as would ordinarily have been produced that year had the seeds been as warranted, less the value of the crop actually produced. *Ford* v. *Farmer's Exch.,* (Tenn. 1916) 189 S. W. 368.

Where seeds are warranted to be true to name and a crop of an inferior quality is produced, it has generally been held that the measure of damages should be the difference between the value of the crop raised and the value of the crop which would have been produced had the seeds been as guaranteed. This is the rule followed in the principal case and is supported by *Passenger v. Thorburn,* 35 Barb. (N. Y.) 17; *Schutt* v. *Baker,* 9 Hun. (N. Y.) 536; *Flick* v. *Wetherbee,* 20 Wis. 392. Where no crop is produced at all, or if it is worthless, some cases allow us damages the expense of preparing the soil (less the general benefit to the land therefrom), the price paid for the seed, and the loss sustained from having the land lie idle. *Phelps* v. *Elyria*

Milling Co., 12 Oh. Dec. 695; *Vaughn's Seed Store* v. *Stringfellow*, 56 Fla. 708. In following this rule practically the same result is obtained as is reached by the cases in the first class, since the loss sustained from having the land idle is usually equivalent to the expected profits. A large number of cases refuse to allow a recovery for losses due to the idleness of the land and reach a different conclusion from that of the foregoing cases. *Ferris* v. *Comstock, Ferre & Co.*, 33 Conn. 513; *Butler* v. *Moore*, 68 Ga. 780; *Reiger* v. *Worth Co.*, 127 N. C. 230.

SPECIFIC PERFORMANCE—OF BUILDING CONTRACT.—The defendant construction company agreed to construct a drainage system for an organized district, and agreed to receive monthly payments as the work progressed. The first payments were to be in cash and the remainder in notes. After the work was more than half completed and the defendant had received all the cash under the contract, the defendant refused to proceed. The work was in imminent danger of being destroyed, and the surrounding lands injured by overflow. It appeared that it was practically impossible to get another contractor to complete the work within a reasonable time. *Held*, that upon a finding that the notes were amply secured the lower court properly decreed specific performance of the contract. *Board of Commissioners* v. *Wills & Sons*, (D. C. 1916), 236 Fed. 362.

It is often stated that equity will not enforce a building contract because to do so would require constant supervision by the court. *Armour* v. *Connolly*, (N. J. 1901) 49 Atl. 1117; *LaHogue Drainage Dist.* v. *Watts*, 179 Fed. 690. FRY, SPECIFIC PERFORMANCE (5th Ed.) 47. However, as early as 1694, the court of chancery granted specific performance of a contract to build a house at the petition of the land-owner's heir. *Holt* v. *Holt*, 1 Eq. Abr. 274, p. 11. Specific performance is often granted in cases where the defendant has agreed to build a structure on his own land, more especially when the land is conveyed to the defendant by the plaintiff upon that condition. *Murray* v. *N. W. R. R. Co.*, 64 S. C. 520, 42 S. E. 617; *Parrott* v. *Atl. & N. C. R. R. Co.*, 165 N. C. 295, 81 S. E. 348. These cases show that there is no inherent disability in a court of equity, preventing it from granting specific performance of a building contract. In most cases where the structure is to be on the plaintiff's land the remedy at law is perfectly adequate, for the plaintiff can hire another to perform the contract and recover damages from the defendant in an action at law. In such cases specific performance is rightly refused. Likewise a court is justified in denying equitable relief where the contract is too indefinite, even when the remedy at law is inadequate. *Ward* v. *Newbold*, 115 Md. 689, 81 Atl. 793; see also *Jones* v. *Parker*, 163 Mass. 564. In the principal case, however, the remedy at law is clearly inadequate and the terms of the contract sufficiently definite to grant specific performance.

TENANCY IN COMMON—CONVEYANCE BY COTENANT OF SPECIFIC PROPERTY.—A tenant in common who owned an undivided five-eighteenths of a tract of land comprising ninety-nine acres, deeded twenty-seven acres of same to de-